

2009 DRAFTING REQUEST

Senate Amendment (SA-SSA1-AB75)

Received: **06/15/2009**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau 7-7597**

By/Representing: **Olin (RR)**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax, Individual - income credit**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

LFB:.....Olin (RR) -

Topic:

Advance earned income tax credit (EITC) payments

Instructions:

See attached. Allow individuals who claim federal advanced EITC payments to request such payments for WI purposes too.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mshovers 06/15/2009	jdyer 06/15/2009	rschluet 06/15/2009	_____	lparisi 06/15/2009		
/2	mshovers 06/15/2009	jdyer 06/16/2009	jfrantze 06/16/2009	_____	cduerst 06/16/2009		
/3	mshovers 06/16/2009	jdyer 06/16/2009	mduchek 06/16/2009	_____	sbasford 06/16/2009		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	mshovers 06/16/2009	jdye 06/16/2009	mduchek 06/16/2009	_____	sbasford 06/16/2009		

FE Sent For:

<END>

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14 MES 6/16/09

MD
6/16 JF

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1/3 MES 6/16/09/3 6/16/09
JF 6/16
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/1 mshovers

1 6/15 jld



FE Sent For:

<END>

1/1 NIS 6/15/09

Shovers, Marc

From: Olin, Rick
Sent: Monday, June 15, 2009 10:12 AM
To: Shovers, Marc
Subject: EITC

Marc:
Please make the advance EITC proposal effective with tax year 2010.
RO

.02 Earned Income Defined

The definition of *earned income* includes wages, salaries, tips, self-employment income, strike benefits, long-term disability benefits received before retirement, tip income, and income received as a statutory employee and any other employee compensation if includible in income for the tax year.

Members of the military may make an election to treat combat zone compensation that is otherwise excluded from gross income under Code Sec. 112 as earned income for purposes of the earned income credit [Code Sec. 32(c)(B)(vi)]. The sunset provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 no longer limit application of the combat pay election to tax years through 2010.

.03 Investment Income Defined

You cannot claim the EIC if your investment income is more than \$2,950 in 2008 [Code Sec. 32(i)]. *Investment income* includes taxable interest and dividends, tax-exempt interest, capital gain net income, the excess of aggregate passive income over passive losses, and net income from rents and royalties not derived in the ordinary course of business. The IRS has announced that low-income taxpayers who realize gain from the sale of business assets need not count such gain as investment income that might disqualify them from entitlement to the EIC. Gain that is treated as long-term capital gain does not constitute disqualified income for purposes of the EIC. However, that gain is includible in a taxpayer's total income figure.²

Refund opportunity

If you couldn't claim the EIC in prior tax years because you included long-term capital gains from the sale of business assets in your EIC calculations for those years, you should apply for a refund. To apply, file an amended return on Form 1040X for each year that the new calculation lowers your investment income below the specified threshold for that year. This change could be significant for any taxpayers who sold any business assets during those years and were unable to claim the EIC because proceeds from that sale exceeded the investment income limits for the year. Remember that you must ordinarily file a claim for refund no later than three years from the date the return was filed or no later than two years from the date the tax was paid, whichever period expires later [Code Sec. 6511(a); Reg. § 301.6511(a)-1]. See Ch. 27 for further discussion of refund claims.

.04 Computing the Credit

For tax years beginning in 2008, the following amounts are used to determine the earned income credit under Code Sec. 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed.

² Rev. Rul. 98-56, 1998-2 CB 667.

Table 2. Earned Income Credit (EIC) Inflation Adjustments for 2008

Item	Number of Qualifying Children		
	One	Two or More	None
Earned Income Amount	\$8,580	\$12,060	\$5,720
Maximum Amount of Credit	\$2,917	\$4,824	\$438
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	\$15,740	\$15,740	\$7,160
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	\$33,995	\$38,646	\$12,880
Threshold Phaseout Amount (Married Filing Jointly)	\$18,740	\$18,740	\$10,160
Completed Phaseout Amount (Married Filing Jointly)	\$36,995	\$41,646	\$15,880

The EIC is phased out above certain income levels. For individuals with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For individuals with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

.05 Advance Earned Income Credit Payment

An employee who wants to receive advance payment of the earned income credit should provide his or her employer with a Form W-5, Earned Income Credit Advance Payment Certificate [Code Sec. 3507(b)]. The employer will add the advance payment to the employee's paycheck. The advance payment will be reflected on the employee's Form W-2 as a separate item [Code Sec. 6051(a)(7)]. An employee will be eligible to receive advance payment of the earned income credit if the employee:

- Works and earns less than \$33,995 in 2008 (\$36,995 if married filing jointly);
- Expects to have a qualifying child; and
- Satisfies all the rules for anybody claiming an earned income credit who has one or more qualifying children [Code Sec. 3507(b)].

A childless worker cannot claim an advance earned income credit. The advance credit paid to an employee cannot exceed 60 percent of the maximum credit available to a taxpayer with one child, regardless of how large a credit the worker could have claimed on his or her own tax return [Code Sec. 3507(c)(2)].

Certain Nonresident Aliens Ineligible for Credit

If you are a nonresident alien for any part of the year, you cannot claim the earned income credit unless you are married to a U.S. citizen or resident and both you and your spouse choose to be treated as residents for the entire year.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBb1390/1

MES:m:n...

LPS - Fix request
sheet please

(RR)

Jld

LFB:.....Olin/ - Advance earned income tax credit (EITC) payments

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 ASSEMBLY BILL 75

1 At the locations indicated, amend the substitute amendment[✓] as follows:

2 **1.** Page 793, line 23: after that line insert:

3 **"SECTION 1584p.** 71.07 (9e) (g)[✓] of the statutes is created to read:

4 71.07 (9e) (g) 1.[✓] If an individual claims the credit under this[✓] subsection and
5 claims the federal advance earned income tax credit, the individual may request that

6 his or her employer add to his or her paycheck an amount calculated under[✓] subd. 2.

7 ~~2. The amount that an individual's employer shall add to the individual's paycheck,~~
8 as described in subd. 1., shall be equal to a percentage of the amount that the

9 individual's employer adds to the ~~the~~[✓] individual's paycheck as an advance earned
10 income tax credit payment under federal law.[✓] The percentage shall be the same

1 percentage as is specified in par. (af),[✓] based on the number of qualifying[✓] children that
2 the individual has.

3 3. The department[✓] shall prepare any forms and instructions that may be
4 necessary to facilitate the addition of the amount calculated under subd. 2.[✓] to an
5 individual's paycheck."[✓]

6 **2.** Page 1875, line 11: after that line insert:

7 ^{5d}
8 "(12^e) ADVANCE PAYMENTS; EARNED INCOME TAX CREDIT.[✓] The treatment of section
9 71.07 (9e) (g)[✓] of the statutes first applies to taxable years beginning after December
31, 2009."[✓]

10 (END)

Shovers, Marc

From: Olin, Rick
Sent: Monday, June 15, 2009 7:41 PM
To: Shovers, Marc
Cc: Reinhardt, Rob
Subject: Advanced EITC

Marc:
Please revise LRBb1390/1 by adding a provision that allows employers to reduce their withholding payments to the state by the amount of the adjustment under subd. 2. In addition, you may be interested in knowing that LSU leads Arkansas 4-1 after 2 innings, and the Tigers have "knocked" the Hogs' starter from the game. Also, Virginia beat the No. 2 seed Cal State-Fullerton earlier today sending the number 2 seed home from the series after only two games.

Rick Olin, Fiscal Analyst
Wisconsin Legislative Fiscal Bureau
(608) 266-3847 (general)
(608) 267-7597 (direct)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBb1390/2

MES:jld:rs

2
fmr

LFB:.....Olin (RR) - Advance earned income tax credit (EITC) payments

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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4 71.07 (9e) (g) 1. If an individual claims the credit under this subsection and
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6 his or her employer add to his or her paycheck an amount calculated under subd. 2.

7 2. The amount that an individual's employer shall add to the individual's
8 paycheck, as described in subd. 1., shall be equal to a percentage of the amount that
9 the individual's employer adds to the individual's paycheck as an advance earned
10 income tax credit payment under federal law. The percentage shall be the same

1 percentage as is specified in par. (af), based on the number of qualifying children that
2 the individual has.

3 3. The department shall prepare any forms and instructions that may be
4 necessary to facilitate the addition of the amount calculated under subd. 2. to an
5 individual's paycheck.".

6 **2.** Page 1875, line 11: after that line insert:

7 "(12d) ADVANCE PAYMENTS; EARNED INCOME TAX CREDIT. The treatment of section
8 71.07 (9e) (g) ^{✓ and 71.64(8)(d) ✓} of the statutes first applies to taxable years beginning after December
9 31, 2009.".

10 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1390/2ins
MES:jld:rs

1 INSERT 2-5

2 **1.** Page 971, line 11: after that line insert: ✓

3 “**SECTION 1777q.** ✓ 71.64 (8) (d) ~~x~~ of the statutes is created to read:

4 71.64 (8) (d) An employer may reduce the amount that the employer would
5 otherwise be required to withhold from an employee's wages under this section ✓ by
6 an amount equal to the amount of the adjustment the employer makes to the
7 employee's check under s. 71.07 (9e) (g) 2.” ✓

Shovers, Marc

From: Olin, Rick
Sent: Tuesday, June 16, 2009 10:18 AM
To: Shovers, Marc
Cc: Reinhardt, Rob
Subject: LRBb1390/2

Hi Marc:

How about creating s. 71.64(1)(d) that looks somewhat like this? Feel free to make changes.

After calculating/determining its withholding payments under (a) for all of its employees, an employer may reduce the amount of its combined payments on behalf of all of its employees to the department by the total amount of any advanced credits extended under s. 71.07(9e)(g).

Rick Olin, Fiscal Analyst
Wisconsin Legislative Fiscal Bureau
(608) 266-3847 (general)
(608) 267-7597 (direct)

Rob
63773

71.07(9e)

*ER may deduct any advance payment they
make from withheld taxes ~~not by~~
that will be forwarded to DOR
under s. 71.64*

in

Shovers, Marc

From: Olin, Rick
Sent: Tuesday, June 16, 2009 9:13 AM
To: Shovers, Marc
Cc: Reinhardt, Rob
Subject: LRB Draft: 09b1390/2 Advance earned income tax credit (EITC) payments

Attachments: 09b1390/2

Hi Marc:

I'm sorry, but the instructions I gave you last night were not sufficiently precise. The additional language you created is OK, but it does not address the employer who does not withhold any wage amounts for a very low wage worker. That employer needs authorization to reduce its total withholding payments to the state by the total amount of advanced credits extended under subdivision 2. If you need clarification, please let me know. Thanks,

Rick Olin, Fiscal Analyst
Wisconsin Legislative Fiscal Bureau
(608) 266-3847 (general)
(608) 267-7597 (direct)

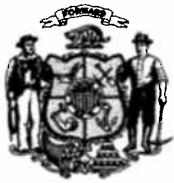
P.S. LSU scored all 9 of its runs last night with two outs.

From: Frantzen, Jean
Sent: Tuesday, June 16, 2009 8:26 AM
To: Olin, Rick
Cc: Reinhardt, Rob; Hanaman, Cathlene; Holten, Vicki
Subject: LRB Draft: 09b1390/2 Advance earned income tax credit (EITC) payments

Following is the PDF version of draft 09b1390/2.



09b13902.pdf (19
KB)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBb1390/2

MES:jld:jf

3
Rmk

LFB:.....Olin (RR) - Advance earned income tax credit (EITC) payments

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 ASSEMBLY BILL 75

X

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 793, line 23: after that line insert:

3 **"SECTION 1584p.** 71.07 (9e) (g) of the statutes is created to read:

4 71.07 (9e) (g) 1. If an individual claims the credit under this subsection and

5 claims the federal advance earned income tax credit, the individual may request that

6 his or her employer add to his or her paycheck ^{✓ advance payment} an amount calculated under subd. 2. ✓

7 ^{✓ advance payment} 2. The amount that an individual's employer shall add to the individual's

8 paycheck, as described in subd. 1., shall be equal to a percentage of the amount that

9 the individual's employer adds to the individual's paycheck as an advance earned

10 income tax credit payment under federal law. The percentage shall be the same

1 percentage as is specified in par. (af), based on the number of qualifying children that
2 the individual has.

3 94.7 3. The department shall prepare any forms and instructions that may be
4 necessary to facilitate the addition of the ^{advance payment} amount calculated under subd. 2. to an
5 individual's paycheck. ^{and any changes to the withholding procedures as described under subd. 3}

6 2. Page 971, line 11: after that line insert:

7 "SECTION 1777q. 71.64 (8) (d) of the statutes is created to read:

8 71.64 (8) (d) An employer may ~~reduce the amount that the employer would~~
9 otherwise be required to withhold from an employee's wages under this section by
10 an amount equal to the amount of the adjustment the employer makes to the
11 employee's check under s. 71.07 (9e) (g) 2."

12 3. Page 1875, line 11: after that line insert:

13 "(12d) ADVANCE PAYMENTS; EARNED INCOME TAX CREDIT. The treatment of sections
14 71.07 (9e) (g) ~~and 71.64 (8) (d)~~ of the statutes first applies to taxable years beginning
15 after December 31, 2009."

16 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1390/3ins
MES:jld:jf

INSERT 2-2

3. An employer may deduct from the aggregate amount that the employer would otherwise be required to withhold[✓] from employee wages and forward to the department, under ss. 71.64[✓] and 71.65[✓], the total amount of any[✓] advance payments the employer makes under subd. 2.[✓]

Shovers, Marc

From: Olin, Rick
Sent: Tuesday, June 16, 2009 2:10 PM
To: Shovers, Marc
Cc: Reinhardt, Rob
Subject: FW: LRB Draft: 09b1390/3 Advance earned income tax credit (EITC) payments

Attachments: 09b1390/3

Marc:

Sorry I missed this, but we need the same effective date language for this as the other tax provisions:

January 1 of the year the act takes effect, except the following year if the date of enactment is after August 31

Rick

From: Duchek, Michael
Sent: Tuesday, June 16, 2009 12:58 PM
To: Olin, Rick
Cc: Reinhardt, Rob; Hanaman, Cathlene; Holten, Vicki
Subject: LRB Draft: 09b1390/3 Advance earned income tax credit (EITC) payments

Following is the PDF version of draft 09b1390/3.



09b13903.pdf (19
KB)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBb1390/3
MES:jld:md

fmr

LFB:.....Olin (RR) – Advance earned income tax credit (EITC) payments

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7 calculated under subd. 2.

8 2. The advance payment amount that an individual's employer shall add to the
9 individual's paycheck, as described in subd. 1., shall be equal to a percentage of the
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1 advance earned income tax credit payment under federal law. The percentage shall
2 be the same percentage as is specified in par. (af), based on the number of qualifying
3 children that the individual has.

4 3. An employer may deduct from the aggregate amount that the employer
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6 department, under ss. 71.64 and 71.65, the total amount of any advance payments
7 the employer makes under subd. 2.

8 4. The department shall prepare any forms and instructions that may be
9 necessary to facilitate the addition of the advance payment amount calculated under
10 subd. 2. to an individual's paycheck and any changes to the withholding procedures
11 as described under subd. 3."

12 **2.** Page 1875, line 11: after that line insert:

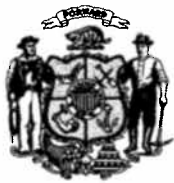
13 "(12d) ADVANCE PAYMENTS; EARNED INCOME TAX CREDIT. The treatment of section

14 71.07 (9e) (g) of the statutes first applies to taxable years beginning ~~after December~~

15 ~~31, 2008~~.".

16 (END)

on January 1 of the year in which this subsection
takes effect, except that if this subsection takes
effect after August 31 the treatment of section
71.07 (9e) (g) of the statutes first applies
to taxable years beginning on January 1 of the
year following the year in which this
subsection takes effect



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBb1390/4
MES:jld:md

LFB:.....Olin (RR) - Advance earned income tax credit (EITC) payments

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4 3. An employer may deduct from the aggregate amount that the employer
5 would otherwise be required to withhold from employee wages and forward to the
6 department, under ss. 71.64 and 71.65, the total amount of any advance payments
7 the employer makes under subd. 2.

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15 the year in which this subsection takes effect, except that if this subsection takes
16 effect after August 31 the treatment of section 71.07 (9e) (g) of the statutes first
17 applies to taxable years beginning on January 1 of the year following the year in
18 which this subsection takes effect.”.

19 (END)